



# **ROADMAP TO THE REVISED RENTAL ASSISTANCE DEMONSTRATION (RAD) NOTICE:**

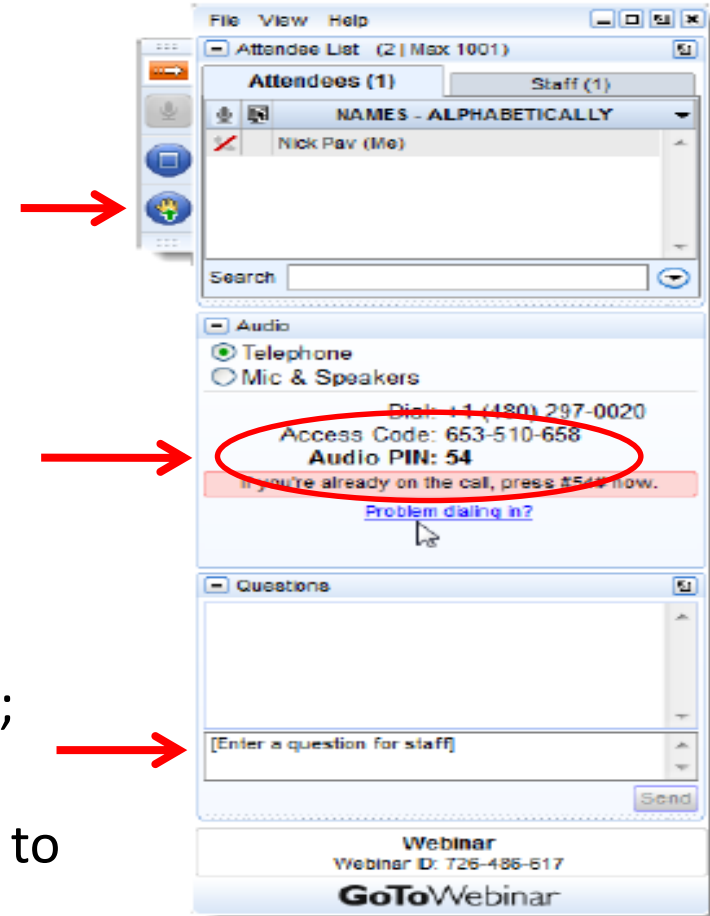
**PIH NOTICE 2012-32/ HOUSING NOTICE 2017-03, REV-3  
FEBRUARY 21, 2017**

## Ask questions! Here's how:

- “Raise your hand” by clicking on the hand icon and the presenter will unmute your line so you can ask your question live

Note: To do this, you MUST call the dial-in number shown on your attendee control panel and input the audio PIN shown, which is unique to each attendee

- Send in questions via the “Question” feature or email them to [rad@hud.gov](mailto:rad@hud.gov); answers to those questions will be provided after the webcast and posted to the FAQs





# WHY A REVISED NOTICE?



- **This revision builds on the program's success and lessons learned in order to ensure that the program's pace continues and more properties can be preserved and transformed.**
- **First Component**
  - Simplify certain program requirements
  - Create new flexibilities to make more conversions feasible
  - Strengthen resident notification
- **Second Component (training to be held 2/23/17)**
  - Improve rent-setting options



# RAD NOTICE – REVISION 3

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## SECTION I: PUBLIC HOUSING CONVERSIONS



# IMPLEMENTATION



- **The revisions to Section 1 of the Notice are effective for all transactions that have not yet closed**
  - HUD may make exceptions for projects near closing
  - Any changes to Eligibility and Selection Criteria (next slide) became effective on February 21<sup>st</sup>. (If public comments lead HUD to reconsider and changes, HUD will issue a separate Notice)



# SELECTION AND ELIGIBILITY CRITERIA



# SELECTION AND ELIGIBILITY CRITERIA

- **Consolidated Priority Categories for new applications (see section 1.11.C)**
  - For all new applications that meet all eligibility criteria, HUD uses Priority Categories to issue CHAPs or to determine the Application's placement on the waiting list. The pre-existing six Priority Categories are now consolidated into two categories:
    - 1) High Investment Applications and Multiphase Applications; and
      - Includes: Full/Partial Demolition, w/ new construction; Choice Neighborhood Planning and/or Implementation Grant awardees, Promise Zones, locally recognized neighborhood revitalization plan; properties approved for Sec 18 Demo/Dispo
    - 2) All Other Applications, Portfolio Awards, and Multi-phase Awards





# SELECTION AND ELIGIBILITY CRITERIA



- **Submission of a Letter of Interest When a Waiting List Has Formed (see section 1.9)**
  - During any period when HUD is maintaining a RAD Waiting List, PHAs may submit a simple letter of interest, in lieu of a RAD application.
  - A letter of interest would serve to reserve a project or portfolio's position on the waiting list (as Category 2 prioritization) subject to future submission of a RAD Application.





# SELECTION AND ELIGIBILITY CRITERIA

- **HOPE VI Projects (see section 1.3.H)**
  - This revision makes an entire HOPE VI project that was originally developed in phases on a contiguous site eligible for conversion under RAD, as long as the earliest phase is greater than ten years old.





# UNDERWRITING STANDARDS



# UNDERWRITING STANDARDS

- **Capital Needs Assessment (CNA) Flexibilities (see section 1.4.A.1)**
  - This revision provides a new exemption of the CNA requirement for non-FHA transactions where the total assisted units will constitute less than 20% of the total units at the project. Such properties may also be exempt from the Excel tool used to establish a 20 year reserve schedule
  - Additional clarifications in this section include:
    - RAD does not require utility consumption baseline for buildings being demolished or new construction
    - Pending future guidance on PBRA or PBV properties, additional categories of properties may be exempt from establishing a utility consumption baseline (e.g. Projects where less than 21 units are assisted)





# UNDERWRITING STANDARDS



- **Acquisition Proceeds (see section 1.4.B.7) - clarifies that a PHA is permitted to receive cash acquisition proceeds in excess of any seller take-back financing.**
  - Such proceeds must be used for Affordable Housing Purposes\*
  - The PHA must escrow the acquisition proceeds received at closing (or during construction) in a bank account covered by a General Depository Agreement (HUD form 51999) until they are disbursed for Affordable Housing Purposes.

\*Affordable Housing Purpose is new term defined in the RAD Notice as: An activity that supports the pre-development, development or rehabilitation of other RAD conversions, public housing, section 8 of the Act, Low-Income Housing Tax Credits (LIHTC), or other federal or local housing programs serving households with incomes at or below 80% of area median income, or that provide services or amenities that will be used primarily by low-income households as defined by the Act.



# UNDERWRITING STANDARDS



- **Allowable Developer Fee (see section 1.14)**
  - The maximum allowable non-deferred developer fee is modified to 15% of total development costs, ***less any acquisition payments made to the PHA, developer fee, and reserves.***
  - A minimum level is established at the lesser of 15% of total development costs (without offset) or \$1 million
  - The scheduled release of the developer fee is removed and is instead left for the PHA to propose in the Financing Plan

Note: Rev 2 developer fee rules would apply to closings where the RCC was issued by or before March 19 and the closing occurred within 60 days of RCC issuance



# UNDERWRITING STANDARDS

- **Establishes greater flexibility to underwrite to new loan products that have emerged in the market (see Section 1.4.B.1).**
  - Permits balloon payments within 17 years of the date of the permanent debt financing
  - Provides HUD greater authority to consider alternative, new products (without a “waiver”)





# UNDERWRITING STANDARDS

- Clarifies that a **single Environmental Review** can cover both demolition and new construction activity. (see Section 1.4.A.9)
- **New Definition: Project** - For purposes of determining a RAD transaction, a “project” is a structure or group of structures that in HUD’s determination are appropriately managed as a single asset.
- **Future Refinancing** (Section 1.6.D.7/ Section 1.7) HUD may provide prior consent to future, anticipated financing (including any permanent financing which is a conversion or take-out of construction financing), through approval of the RCC.





# NEW FLEXIBILITIES





# NEW FLEXIBILITIES



- **Accumulated RHF/DDTF can be used to increase Initial RAD Rents (see section 1.6.B.5/1.7.A.5)**
  - PHAs may now relinquish existing balances of replacement housing factor (RHF) funds or demolition and disposition transition funding (DDTF) to increase initial contract rents
  - Similar to the calculation for anticipated RHF/DDTF grants, the rent increase is:  
*$$\text{Undisbursed RHF/DDTF} \div 20\text{yrs} \div 12 \text{ months} \div \# \text{ of Units}$$*
- Alternatively, PHAs could still use the funds in the development budget



# NEW FLEXIBILITIES

- **Eliminates cap on the Number of PBV Units in Each Project (see section 1.6.A.2).**
  - The limit on the cap on the number of PBV units in a project is eliminated. (Previously, it had been increased from 25% to 50% under RAD for Converting Projects.)
  - Related provisions related to exceptions to project cap (regarding services) are also eliminated by this revision to the Notice.
  - Revision aligns with reforms made under HOTMA





# NEW FLEXIBILITIES

- **Expands the conditions in which a public or non-profit can demonstration ownership and control (see section 1.4.A.11)**
- The public or non-profit (or a wholly owned affiliate) satisfies the requirement if it:
  - 1) holds a fee simple interest in the real property of the Covered Project;
  - 2) **is the lessor under a ground lease with the Project Owner;**
  - 3) has the direct or indirect legal authority (via contract, partnership share or agreement of an equity partnership, voting rights, or otherwise) to direct the financial and legal interests of the Project Owner **with respect to the RAD units;**
  - 4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company **with all powers of a general partner or managing member, as applicable;**
  - 5) **owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD;**
  - 6) **owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or**
  - 7) **other ownership and control arrangements approved by HUD.**





# NEW FLEXIBILITIES



- A project that has **received a Section 18 approval** is now permitted to be submitted for RAD if it: (Section 1.5.B)
  - Awarded, but did not yet execute, a demolition contract
  - Requested, but did not yet receive, Tenant Protection Vouchers
- If a PHA secures **both Section 18 and RAD approval for a property** the PHA has 90 days, rather than ten days, to determine whether it will be utilizing Section 18 or RAD. (Section 1.5.B)
- Removes the requirement that a **MTW** agency must have two or more RAD applications in order to supplement rents with MTW funds. (Section 1.9)
- Eliminates the provision that had required alternative Operating Subsidy **MTW** agencies to use rents based on 24 CFR Part 990 (i.e. the Operating Fund rule) for applications submitted after March 5, 2015



# NEW FLEXIBILITIES



- Previously, a PHA had to demonstrate that any **de minimis reduction** in units better serves residents. Now it can demonstrate that it benefits either the Covered Project, or the operating viability of the PHA's RAD or public housing portfolio as well. (Section 1.4.A.4)
- Any property or the proceeds received from the sale of any property that is **released from the DOT under the de minimis exception** must be used for Affordable Housing purposes. (Section 1.4.A.4))
- **When Total Tenant Payment Exceeds Gross Rent:** Pre-existing Notice provision required tenant to pay 30% of a adjusted gross income when TTP exceeds Gross Rents. Rev 3:
  - Provides exception for LIHTC max rent (i.e. when  $TTP > \text{Gross rent}$ , tenant will pay lesser of 30% of adjusted income or LIHTC max rent and
  - Clarifies that such households may be required to be processed in TRACS when the system can accommodate these submissions



# NEW FLEXIBILITIES



- Clarifies that requirement that transfers of assistance to LIHTC properties **within its 15-year tax credit compliance period** must demonstrate that it is necessary to help with the de-concentration of poverty and/or the de-densification of a public housing project. (Section 1.4.A.12)
- Affirms that any **management fees** earned following conversion are not subject to any federal restrictions. (Section 1.13.B.7)
- With HUD consent, **PHAs may substitute projects in the portfolio award**, and switch projects between the active and pending portions of the portfolio. Further, PHAs that have received CHAPs for multiple projects, but that did not request a Portfolio Award, may convert their awards into a Portfolio Award as long as no more than half of the converting projects are covered under the Portfolio Award. (Section 1.9)



# RESIDENT RIGHTS





# RESIDENT RIGHTS

- **Expanded Resident Notification Requirements (see section 1.8)**
  - Prior to the first of the two required resident meetings, the PHA must issue a **RAD Information Notice (RIN)** to inform residents of their rights in connection with a proposed conversion (regardless of whether any relocation is anticipated).
  - The PHA should also issue a **General Information Notice (GIN)** if it is required by URA and the Fair Housing, Civil Rights, and Relocation Notice







# RESIDENT RIGHTS



- **Expanded Resident Notification Requirements (see section 1.8) (Cont'd)**
  - Specific requirements for the two resident meetings. PHAs must explain their intentions with respect to the following:
    - Whether the conversion will include a transfer of assistance
    - Plans to partner with an entity other than an PHA affiliate or instrumentality particularly if such partner will have high level (i.e., General Partner or Managing Member) ownership interest in the new structure
    - Any change in the number of or configuration of assisted units that may impact a household's ability to re-occupy the project
    - Any de minimis reduction of units which has been vacant for 24 months
    - Scope of work



# RESIDENT RIGHTS

- **Expanded Resident Notification Requirements (see section 1.8) (Cont'd)**
  - Specifies that at least one more resident meeting needs to occur **prior to submission of the Financing Plan** (previously, the Notice had only required another meeting prior to conversion) AND **additional meetings with residents** are required if there are any material changes to the utility allowance or any substantial changes to the conversion plans
  - Requires that PHAs submit with their Financing Plans **responses to resident comments** in connection with meetings held following the issuance of the CHAP. (see Attachment 1A)





# RESIDENT RIGHTS



- **Extending the Prohibition on Re-screening to Other Assisted Units (see sections 1.6.C.1 and 1.7.B.1)**
  - Current public housing households at the Converting Project cannot be excluded from occupancy based on any rescreening, income eligibility, or income targeting ***including households that will reside in non-RAD PBV or non-RAD project-based rental assistance (PBRA) units***
  - While this change is intended to facilitate the right to return to the assisted property, such families and such contract units will otherwise be subject to all applicable program requirements



# RESIDENT RIGHTS

- **Phase-In of Tenant Rent Increases (see sections 1.6.C.4 and 1.7.B.3)**
  - This revision corrects the phase-in of rents for residents who may experience a rent increase as a result of conversion, in order to ensure a more even distribution across years





# RESIDENT RIGHTS



- **Establishment of Waiting List:** Notice provides some additional guidance regarding how the PHA can transition applicants from the current public housing waiting list.
- **Notice of Termination of lease:** Clarifies the requirement regarding Notification of Termination of lease post-conversion to ensure that residents will generally receive at least 30 days of notification, except when there is a healthy or safety risk or if state or local law require a shorter period



# IMPROVING PROCESSING



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- Eliminates the **RAD Application requirement** to secure a letter from the tax credit issuing agency. (Section 1.9)
- For **CHAPs involving 9% LIHTC**, the PHA must submit evidence that it has applied for 9% LIHTC within 30 days following the application submission deadline for the first available 9% LIHTC round in their state to occur after a 90 day grace period after the CHAP issuance date. (Section 1.9)





# IMPROVING PROCESSING



- **Title Reports to be submitted with the Financing Plan (see Attachment 1A)**
  - PHAs are now required to submit a complete title report tracing title back to the vesting deed and including information on whether the Converting Project is currently subject to a DOT or DORC and any other liens, encroachments, or other encumbrances on the property.
  - This new requirement is intended to avoid delays in closing particularly if there are corrections needed to the title report that must be made prior to closing.





# IMPROVING PROCESSING



- **Operating Fund in the Year of Conversion:**
  - Simplifies the calculation of Operating Funds that are eligible to be used on the Covered Project in the Year of Conversion.
  - Removes the process wherein Operating Funds are moved to a RAD BLI in LOCCS. Instead, HUD will periodically publish the maximum values for converted properties. (Section 1.13.B.5)
- Clarifies that the **RAD Use Agreement** must be recorded prior to the Security Instrument or any other mortgage or security instrument relating to an FHA-insured loan or a Risk-share loan.



# IMPROVING PROCESSING

- Replaces a Post-Closing Cost Cert with a **Post-Closing Completion certification** (under development) where Owners would provide a certification of compliance with the requirements of the RCC





# OTHER



- **Lead-Based Paint Hazards (see section 1.4.A.15)**
  - This new paragraph provides non-exhaustive guidance on the owners' responsibilities to treat lead-based paint hazards in the context of a RAD conversion.
  - PHAs are currently required to conduct a lead-based paint inspection and a lead risk assessment on a pre-1978 public housing property, and, subsequently, conduct ongoing lead-based paint maintenance and periodic re-evaluation for lead-based paint hazards. Any available documentation must be made available to the CNA contractor so that the Project Owner's responsibility to treat lead-based paint hazards is included in the scope of work



# OTHER

- **New Guidance regarding Current PHA Employees (see section 1.4.A.16)**
  - This new paragraph encourages PHAs and their partners to grant current workers whose employment positions may be eliminated during conversion the right of first refusal for new employment openings for which they are qualified.





- **Relocation and Civil Rights**

- The PHA is responsible for ensuring that up front civil rights reviews and relocation activities are conducted as required in the RAD Fair Housing, Civil Rights, and Relocation Notice prior to financing plan submission.
- All requirements related to relocation that occurs as a result of public housing conversions are found in the RAD Relocation Notice (Notice H 2016-17/PIH 2016-17)
- Reminder: Do not relocate tenants prior to RCC
- Training webinar on RAD Resource Desk

# QUESTIONS?

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